



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/728,461	12/05/2003	Kingsley A. Whipple	7142.02.01	9399

7590

10/13/2006

John L. Isaac, Esq.  
Isaac & Associates  
Suite 900  
143 Union Blvd.  
Lakewood, CO 80228-1829

EXAMINER

ENSEY, BRIAN

ART UNIT

PAPER NUMBER

2615

DATE MAILED: 10/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/728,461

Applicant(s)

WHIPPLE, KINGSLEY A.

Examiner

Brian Ensey

Art Unit

2615

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 05 December 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7, 10-14 and 16-20 is/are rejected.
- 7) ☒ Claim(s) 8, 9 and 15 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 5, 11 and 16-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schultz et al. U.S. Patent No. 5,625,903.

Regarding claim 1, Schultz discloses an elastic headband device with integrated audio system comprising: a stretchable cloth member (40) sized and shaped for positioning about the head and ears of an individual wearer (Schultz teaches substantially one size fabric headband can be suitable for almost all occasions since the speaker position can be adjusted to suit the person wearing the headband, therefore it is inherent that the headband is stretchable), said cloth member having a central cavity throughout with first and second side portions and a rear portion; a pair of audio speaker elements (35) removably disposed within the central cavity of said cloth member at said first (41) and second (42) side portions; a mechanism (32) for adjusting the relative position of each said audio speaker element within said central cavity at its respective side portion to position each element opposite an ear opening of an individual wearer; a central aperture positioned at said cloth member rear portion accessing said central cavity (See col. 4, lines 29-33); and a plurality of speaker wires (W) attached to said audio speaker elements within said cloth member central cavity and exiting through said central aperture at said rear portion for connection to an audio generation system (See Fig. 3 and col. 3, line 63 to col. 4, line 64).

Regarding claim 5, Schultz further discloses said adjustment elements (32) comprise a plurality of attachment members at each said side portion within said cavity for adjustably and removably positioning said audio speakers in said cavity opposite the ear openings of any particular individual wearing the device (See Fig. 3 and col. 4, lines 29-46).

Regarding claim 11, Schultz discloses a combination headband and earphone device comprising: a cloth headband (40) sized and shaped for placement around the head and over the ears of an individual and including first and second side portions for covering the individual's ears, a front portion for covering the forehead of the individual and a rear portion, said headband having inner (41) and outer layers (42) forming a central cavity throughout said first and second side portions and said rear portion; a pair of audio speakers (35) removably disposed within the central cavity of said headband at said first and second side portions; adjustment elements (32) disposed at the relative positions of each said audio speaker within said central cavity at said respective side portions to adjustably position each speaker opposite an ear opening of an individual wearing said headband; a central opening located at said headband rear portion for accessing said central cavity (See col. 4, lines 29-33); and a plurality of speaker wires (W) attached to said audio speakers within said headband central cavity and exiting through said central opening at said rear portion for connection (P) to an audio generation system carried by the individual wearing said headband (See Fig. 3 and col. 3, lines 39-43 and col. 3, line 63 to col. 4, line 64).

Regarding claim 16, Schultz discloses an ear protection device adapted for housing an audio system comprising: a cloth headband (40) sized and shaped for positioning about the head and ears of an individual wearer, said cloth headband having sufficient elasticity to permit

Art Unit: 2615

placement over a plurality of different size heads and including first and second side portions for covering an individual's ears, a front portion for covering an individual's forehead, and a rear portion; a central cavity defined within said headband side and rear portions; a central aperture positioned at said cloth headband rear portion accessing said central cavity (See col. 4, lines 29-33); and a mechanism (32) for selectively attaching and adjustably positioning sound emitting elements (35) in said central cavity at said side portions (See Fig. 3 and col. 3, line 63 to col. 4, line 64).

Regarding claim 17, Schultz further discloses said sound emitting elements comprise a pair of audio speaker members (35) removably disposed within the central cavity of said cloth headband at said first and second side portions proximate the ears of an individual wearer (See Fig. 3 and col. 4, lines 29-46).

Regarding claim 18, Schultz further discloses said device further includes a plurality of speaker wires (W) attached to said audio speaker members within said headband central cavity and exiting through said central aperture at said rear portion for connection (P) to an audio generation system carried by the individual wearer (See col. 4, lines 29-33 and col. 3, lines 39-43).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2-4, 12, 13, 19 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schultz in view of Spates U.S. Patent No. 4,864,619.

Regarding claim 2, Schultz does not expressly disclose said cloth headband comprises material adapted to provide sweat absorption as well as warmth projection to the head and ears of an individual wearer. However, Schultz teaches the head band covers the ears and is used by joggers. Further, Spates teaches a flexible stereo headband (10) including a fashionable waterproof and breathable fabric having an insulating material (See Fig. 1 and abstract). Therefore, It would have been obvious to one of ordinary skill in the art at the time of the invention to utilize the material of Spates in the construction of the headband of Schultz for a headband providing thermal protection perspiration dissipation to the wearer (See Spates abstract).

Regarding claim 3, the combination of Schultz in view of Spates further discloses said cloth material comprises an inner (41) and an outer layer (42) secured together to form said central cavity (See Schultz Fig. 3 and col. 4, lines 5-13).

Regarding claim 4, the combination of Schultz in view of Spates further discloses said audio speaker elements (35) are disposed between said inner and outer layers of cloth (See Schultz Fig. 3 and col. 4, lines 29-46).

Regarding claim 12, Schultz further discloses said cloth material having an inner (41) and an outer layer (42) secured together to form said central cavity for housing said audio speakers (See Fig. 3 and col. 4, lines 5-9). Schultz does not expressly disclose said cloth headband comprises material adapted to provide sweat absorption as well as warmth projection to the head and ears of an individual wearer. However, Schultz teaches the head band covers the ears and is

Art Unit: 2615

used by joggers. Further, Spates teaches a flexible stereo headband (10) including a fashionable waterproof and breathable fabric having an insulating material (See Fig. 1 and abstract).

Therefore, It would have been obvious to one of ordinary skill in the art at the time of the invention to utilize the material of Spates in the construction of the headband of Schultz for a headband providing thermal protection perspiration dissipation to the wearer (See Spates abstract).

Regarding claim 13, the combination of Schultz in view of Spates further discloses said adjustment elements (32) comprise a plurality of attachment members at each said side portion within said cavity for adjustably and removably positioning said audio speakers in said cavity opposite the ear openings of any particular individual wearing the device (See Schultz Fig. 3 and col. 4, lines 29-46).

Regarding claim 19, the combination of Schultz in view of Spates further discloses said cloth material having an inner (41) and an outer layer (42) secured together to form said central cavity (See Fig. 3 and col. 4, lines 5-9). The combination of Schultz in view of Spates does not expressly disclose said cloth headband comprises material adapted to provide sweat absorption as well as warmth projection to the head and ears of an individual wearer. However, Schultz teaches the head band covers the ears and is used by joggers. Further, Spates teaches a flexible stereo headband (10) including a fashionable waterproof and breathable fabric having an insulating material (See Fig. 1 and abstract). Therefore, It would have been obvious to one of ordinary skill in the art at the time of the invention to utilize the material of Spates in the construction of the headband of Schultz for a headband providing thermal protection perspiration dissipation to the wearer (See Spates abstract).

Regarding claim 20, the combination of Schultz in view of Spates further discloses said attachment mechanism comprises a pair of attachment elements (32) disposed in said side portions for adjustably positioning said sound emitting elements in said cavity opposite the ear openings of an individual wearer (See Schultz Fig. 3 and col. 4, lines 29-46).

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Schultz as applied to claim 5 above, and further in view of Makins U.S. Patent No. 4,776,044.

Regarding claim 6, Schultz discloses a headband as claimed. Shultz does not expressly disclose said attachment elements comprised a pair of hook and loop members secured to said cloth member and to said speaker elements for selectively positioning and securing said audio speaker elements in said cavity. However, the use of hook and loop members for attaching speaker elements in a wearable head device is well known in the art and Makins teaches a hat comprising ear flaps (22,24) wherein speaker elements (54,56) are mounted to an inner wall (36) member utilizing hook and loop attachment elements (70) such that the speaker elements can be repositioned to suit the ear location of the specific user (See Makins Figs. 3-5, abstract and col. 3, lines 16-41). Therefore, It would have been obvious to one of ordinary skill in the art at the time of the invention to replace the attachment elements of Schultz with the hook and loop attachment elements of Makins for adjustable speaker location suitable to a specific user.

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Schultz as applied to claim 5 above, and further in view of Faunce U.S. Patent No. 6,319,015.

Regarding claim 7, Schultz discloses a headband as claimed. Shultz does not expressly disclose said attachment elements comprised a plurality of snap lock members secured to said cloth member and to said speaker elements for selectively positioning and securing said audio



Art Unit: 2615

speaker elements in said cavity. However, the use of snap lock members for attaching electrical elements in a wearable head device is well known in the art and Faunce teaches a wearable headband comprising speaker elements (26) are mounted to an inner wall (28) member an snap lock member to securely hold an electrical connection to the headband (See Faunce Fig. 2 and col. 4, lines 56-66). Therefore, It would have been obvious to one of ordinary skill in the art at the time of the invention to replace the attachment elements of Schultz with the snap hook elements of Faunce for a secure and adjustable attachment of speaker locations suitable to a specific user.

Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Schultz.

Regarding claim 10, Schultz further discloses said audio speaker elements (35) are removably secured within said cavity to enable adjustable positioning within said cavity (See Fig. 3 and col. 4, lines 29-46). Shultz does not expressly disclose said speaker elements are removable through said central aperture for washing of said cloth member. However, Schultz teaches a rear central aperture for inserting connection wires (See col. 4, lines 29-33). Shultz further teaches the headband is used for jogging. Therefore, It would have been obvious to one of ordinary skill in the art at the time of the invention to provide for removing the speakers through the disclosed rear opening to allow washing of the headband.

Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of Schultz in view of Spates as applied to claim 13 above, and further in view of Makins.

Regarding claim 14, over the combination of Schultz in view of Spates discloses a headband as claimed. The combination of Schultz in view of Spates does not expressly disclose said attachment members are selected from the group consisting of hook and loop fasteners and

Art Unit: 2615

snap lock connectors. However, the use of hook and loop members for attachment members in a wearable head device is well known in the art and Makins teaches a hat comprising ear flaps (22,24) wherein speaker elements (54,56) are mounted to an inner wall (36) member utilizing hook and loop attachment elements (70) such that the speaker elements can be repositioned to suit the ear location of the specific user (See Makins Figs. 3-5, abstract and col. 3, lines 16-41). Therefore, It would have been obvious to one of ordinary skill in the art at the time of the invention to replace the attachment elements of Schultz with the hook and loop attachment elements of Makins for adjustable speaker location suitable to a specific user.

#### ***Allowable Subject Matter***

Claims 8, 9 and 15 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian Ensey whose telephone number is 571-272-7496. The examiner can normally be reached on Monday - Friday 6:30 AM - 3:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sinh Tran can be reached on 571-272-7564. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 2615

**Any response to this action should be mailed to:**

Commissioner of Patents and Trademarks  
P.O. Box 1450  
Alexandria, Va. 22313-1450

**Or faxed to:**

(571) 273-8300, for formal communications intended for entry and for informal or draft communications, please label "PROPOSED" or "DRAFT".  
Hand-delivered responses should be brought to:

Customer Service Window  
Randolph Building  
401 Dulany Street  
Arlington, VA 22314

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Brian Ensey  
Examiner  
October 4, 2006